

RESOLUTION AND ORDER NO. 10-16-858

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING A RENEWAL, EXTENSION, AND AMENDMENT OF CONTRACT NO. 13-656-HCP BETWEEN THE EAA AND SWCA, INCORPORATED, TO CONTINUE TO PROVIDE FOR A WATER QUALITY SAMPLING AND ANALYSIS PROGRAM FOR THE COMAL AND SAN MARCOS SPRINGS ECOSYSTEMS, IN AN AMOUNT NOT TO EXCEED \$431,000 FOR THE PERIOD JANUARY 1, 2017 THROUGH DECEMBER 31, 2018; AND AUTHORIZING THE GENERAL MANAGER TO EXECUTE THE DOCUMENTS NECESSARY TO EFFECTUATE THE CONTRACT RENEWAL, EXTENSION, AND AMENDMENT.

WHEREAS, the Edwards Aquifer Authority ("EAA") was created by the Edwards Aquifer Authority Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350; as amended ("Act"); and

WHEREAS, under Section 1.02 of the Act, the EAA is a conservation and reclamation district created by virtue of Article XVI, Section 59 of the Texas Constitution; and is a governmental agency and body politic and corporate vested with the full authority to exercise the powers and to perform the functions specified in the Act; and

WHEREAS, under Section 1.08(a) of the Act, the EAA has all the powers, rights and privileges necessary to manage, conserve, preserve, and protect the Aquifer and prevent the waste of water in, the Aquifer; and

WHEREAS, under Sections 1.01, 1.11, 1.14 and 1.26A of the Act, the EAA is authorized to implement programs designed to protect threatened and endangered species associated with the Aquifer; and

WHEREAS, under Section 1.27 of the Act, the EAA may conduct research; and

WHEREAS, under Section 1.11(d)(2) of the Act, the EAA may enter into contracts; and

WHEREAS, under Section 49.211(a), Texas Water Code, the EAA has the functions, powers, authority, rights, and duties that will permit it to accomplish the purposes for which it was created or the purposes authorized by the constitution, the Texas Water Code, or any other law; and

WHEREAS, under Section 49.213(b), Texas Water Code, the EAA may enter into contracts with any person or any public or private entity in the performance of any purpose or function permitted by the EAA; and

WHEREAS, under Section 49.213(c)(7), Texas Water Code, the EAA may enter into contracts with persons or any public or private entities on the terms and conditions the Board of Directors ("Board") of the EAA may consider desirable, fair, and advantageous for, among other things, the exercise of any rights, powers, and duties granted to the EAA; and

WHEREAS, the purpose of the EAA in contributing funding for the Water Quality Sampling and Analysis Program for Comal and San Marcos Springs ecosystems project to

implement the EAHCP in order to provide for maintenance and protection of the endangered and threatened species to the extent required by federal law is a purpose or function permitted by the EAA under the Act; and

WHEREAS, under Section 1.11(d)(9) of the Act, the EAA is authorized to hold an incidental take permit under the Federal Endangered Species Act of 1973 ("ESA"), 16 U.S.C. §§ 1531-1544; and

WHEREAS, Paragraph E of Incidental Take Permit No. TE63663A-O ("ITP") issued to the EAA, the City of New Braunfels, the City of San Marcos, the City of San Antonio, acting by and through its San Antonio Water System, and Texas State University ("Permittees"), requires the Permittees to comply with the terms and conditions contained in the Edwards Aquifer Habitat Conservation Plan ("EAHCP"); and

WHEREAS, Section 5.7.2 of the EAHCP requires the EAA to provide a means of detecting early changes to water quality that negatively impact the Covered Species.

WHEREAS, a part of the EAHCP is that certain Funding and Management Agreement ("FMA") effective January 1, 2012, that provides the terms of the rights and duties of the Permittees for managing and funding the implementation of the EAHCP, and the terms of the Adaptive Management Process; and

WHEREAS, on October 8, 2013, the EAA entered into that certain Contract No. 13-656-HCP ("Contract") between the EAA and SWCA, Incorporated to provide for an expanded water quality monitoring program; and

WHEREAS, Article III, paragraph 3.2 of the Contract authorizes three renewals of the Contract; and

WHEREAS, on November 11, 2015, the EAA executed the first renewal of the Contract; and

WHEREAS, the EAA desires to consolidate its remaining renewal options into one two-year renewal; and

WHEREAS, this two-year renewal and extension is the last possible renewal and extension period provided for under the Contract; and

WHEREAS, on September 27, 2016, the Research and Technology Committee, voted to recommend that the EAA Board adopt a resolution and order approving a two-year renewal extension, and amendment of the Contract with SWCA, Incorporated to continue to provide for a water quality sampling and analysis program for the Comal and San Marcos Springs ecosystems, in an amount not to exceed \$431,000 for the period January 1, 2017 through December 31, 2018; and authorizing the general manager to execute the documents necessary to effectuate the renewal; and

WHEREAS, Article 10.02(b) of the EAA's Bylaws requires that contracts whose value exceeds \$100,000 be approved by a written resolution; and

WHEREAS, the total amount to be paid to SWCA Incorporated, under the terms of the

renewal of the Contract will exceed \$100,000; and

WHEREAS, the original Contract and the renewal and extension documents for the Contract were reviewed by the EAA's legal counsel prior to Board approval; and

WHEREAS, a regular meeting of the Board was held on October 11, 2016, at 3:00 p.m., notice of public meeting having been duly and properly posted in accordance with Chapter 551, Texas Government Code; and

WHEREAS, an agenda item was duly listed in the notice of public meeting that is the subject of this Resolution and Order; and

WHEREAS, a majority of the Directors of the Board were present and constituted a quorum; and

WHEREAS, a vote of the majority of the quorum of the Board present passed on, voted in favor of, and adopted the following Resolution and Order; and

WHEREAS, it is in the public interest that the EAA approve the renewal and extension of the Contract for an additional two-year period.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE BOARD OF DIRECTORS OF THE EDWARDS AQUIFER AUTHORITY THAT:

- Section 1. The recitals set out above are found to be true and correct, and they are hereby adopted by the Board of Directors and are made a part of this Resolution and Order for all purposes.
- Section 2. The Board of Directors hereby approves the renewal, extension, and amendment of Contract No. 13-656-HCP with SWCA, Incorporated for an additional two-year period being the last possible renewal and extension, in an amount not to exceed \$431,000 to continue to provide an expanded water quality monitoring program for the Comal and San Marcos springs ecosystems for the period January 1, 2017 through December 31, 2018.
- Section 3. The General Manager is authorized to execute and deliver the documents necessary to effectuate the renewal and extension of the Contract attached hereto and release payment required by the Contract as renewed and extended.
- Section 4. This Resolution and Order shall become effective from and after its adoption.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE EDWARDS
AQUIFER AUTHORITY THIS 11TH OF OCTOBER, 2016.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Enrique Valdivia
Secretary, Board of Directors

APPROVED AS TO FORM



Darcy Alan Frownfelter
General Counsel